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RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—MARKETABLE TITLE.—Land had been in the possession of P and his predecessors for twenty-eight years in such a manner that the court found that, beyond a reasonable doubt, title had been established by adverse possession. *Held*, that P could give D, a purchaser, a good and marketable title. *Winer v. Hooper* (Md., 1921), 115 Atl. 31.

It is now almost unanimously conceded that a title by adverse possession is a marketable one. *Scott v. Nixon*, 3 Dr. & War. (Ir.) 388; *Barnard v. Brown*, 112 Mich. 452; and cases cited in 38 L. R. A. (n. s.) 26. A few cases hold the contrary. *Watson v. Boyle*, 55 Wash. 141; *Lockhart v. Ferry*, 59 Ore. 179; *Benson v. Shotwell*, 87 Cal. 49. The burden is on the vendor to show that all the elements are present which are necessary to establish adverse possession. *Simis v. McElroy*, 160 N. Y. 156, 73 Am. St. Rep. 673. Of course, if the contract of sale calls for a record title, adverse possession is not sufficient. *Noyes v. Johnson*, 139 Mass. 436. It is said in *Tewksbury v. Howard*, 138 Ind. 103, that "title by adverse possession is as high as any known to the law." But, as a practical matter, it would seem that property with a clear record title could be more readily sold than that which has a title based solely on the legal theory of adverse possession. For this reason it seems that the vendor should be required to use every reasonable effort to perfect the record title before invoking the aid of equity to force a vendee to take a title based on adverse possession. For marketable title generally, see 8 MICH. L. REV. 493.

BONA FIDE PURCHASER—PURCHASER NOT SECURING LEGAL ESTATE—PURCHASER NOT PAYING FULL PRICE.—The plaintiff contracted to sell half of a parcel of land which he owned. By mistake the contract called for the whole parcel. The vendee assigned the contract to the defendant, Johnson, who fraudulently executed a land contract to an innocent purchaser, Rogerson (also made defendant), purporting to sell the whole parcel to him. In a suit for reformation of the contracts it was *held*, that the innocent party was a *bona fide* purchaser for value (not discussed) and that as against him the plaintiff was only entitled to a lien on the unpaid purchase money, and that upon payment to the plaintiff of the value of the land included by mistake the latter should convey the whole parcel. *Clark v. Johnson*, 214 Mich. 577.

Regarding the rights of a purchaser who has obtained legal title and paid part consideration before receiving notice of a prior equitable claim, the American cases are in conflict. Some courts would give such a purchaser no protection against the owner of the prior equity, except perhaps a lien on any amount still due from the latter to the vendor. *Palmer v. Williams*, 24 Mich. 328; *Kilcrease v. Lum and Wife*, 36 Miss. 569. Others hold the innocent purchaser entitled to remuneration for the amount paid in good